

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of	)	
<b>ENBRIDGE ENERGY, LIMITED PARTNERSHIP,</b>	)	
against <b>UPPER PENINSULA POWER COMPANY.</b>	)	Case No. U-17077
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At the July 12, 2017 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**ORDER**

History of Proceedings

On December 16, 2009, in Case No. U-15988, the Commission approved a settlement agreement between Upper Peninsula Power Company (UPPCo), the Commission Staff (Staff), and several intervening parties that, among other things, authorized a rate increase and established a pilot revenue decoupling mechanism (RDM) for UPPCo (December 16 order). Enbridge Energy, Limited Partnership (Enbridge) was not among the parties who petitioned for intervention and did not participate in the settlement.

Subsequently, UPPCo filed two additional rate cases, Case Nos. U-16166 and U-16417, both of which were resolved by settlement agreement and approved by the Commission on December 21, 2010, and December 20, 2011, respectively. The settlement agreement in Case No. U-16166 included, with one modification, the RDM established in Case No. U-15988

(December 21 order). In Case No. U-16417, the parties agreed that the modified RDM would terminate on December 31, 2011, but that the termination would “not affect the reconciliation and related surcharges/credits associated with UPPCo’s 2010 and 2011 RDM.” December 20, 2011 order in Case No. U-16417, p. 3. Enbridge did not intervene in either case.

On May 13, 2011, UPPCo filed an application in Case No. U-16568 to reconcile its RDM for 2010. Again, Enbridge did not petition for intervention. After a fully contested hearing, the Administrative Law Judge issued a Proposal for Decision (PFD) on March 28, 2012 (March 28 PFD).

Following the March 28 PFD, but prior to the Commission’s August 14, 2012 decision in Case No. U-16568 (August 14 order), the Court of Appeals issued an opinion in *In re Detroit Edison Co Application*, 296 Mich App 101; 817 NW2d 630 (2012) (*In re Detroit Edison*), reversing a Commission order approving an electric RDM for DTE Electric Company (DTE Electric) in a different contested case hearing. In exceptions and replies to exceptions in the immediate case, the parties addressed the significance of *In re Detroit Edison*. Once again, Enbridge did not intervene.

In its August 14 order, the Commission considered the impact of *In re Detroit Edison*, determined that it did not apply to UPPCo’s RDM (which was implemented via settlement agreement), approved the company’s 2010 reconciliation of its RDM, and authorized UPPCo to collect a revenue shortfall of \$1,723,294.

On August 20, 2012, Enbridge filed a petition for rehearing, or in the alternative, formal complaint requesting that the Commission reconsider its August 14 order (August 20 petition and complaint). The Commission denied Enbridge’s petition for rehearing on September 25, 2012, in Case No. U-16568 (September 25 order), finding that Enbridge was not a party and therefore,

lacked standing to file a petition for rehearing. In addition, the Commission rejected Enbridge's complaint, determining that the company failed to state a claim upon which relief may be granted. The August 14 and September 25 orders contained standard appellate language directing persons interested in appealing the orders to "do so in the appropriate court within 30 days after issuance and notice...pursuant to MCL 462.26." August 14 order, p. 6, and September 25 order, p. 4. Enbridge did not appeal either order.

On October 23, 2012, Enbridge filed a formal complaint against UPPCo alleging that the Commission lacked statutory authority to approve an electric RDM, an RDM reconciliation, and resulting revenue shortfall. On December 11, 2012, UPPCo filed an answer and motion to dismiss. The Commission Staff (Staff) and Enbridge filed motions for summary disposition on December 11 and 12, 2012, respectively. On December 14, 2012, UPPCo filed a response to Enbridge's motion for summary disposition.

On May 13, 2014, the Commission granted UPPCo's motion to dismiss and dismissed the complaint with prejudice (May 13 order).

On May 27, 2014, Enbridge appealed the May 13 order to the Court of Appeals. On December 22, 2015, the Court of Appeals issued an order in which it stated that the Commission erred in upholding the settlement agreement including the RDM and in dismissing Enbridge's complaint (December 22 order). 313 Mich App 675; 884 NW2d 585 (2015). The Court of Appeals remanded the case for further proceedings.

On February 2, 2016, UPPCo and the Staff filed applications for leave to appeal the December 22 order with the Michigan Supreme Court. On February 5, 2016, the Staff filed an amended application for leave to appeal. The Supreme Court heard oral argument regarding the applications on March 8, 2017, and denied the applications on May 24, 2017. No party filed

timely petitions for reconsideration. The Supreme Court's denial of the applications leaves intact the Court of Appeals' December 22 order remanding the case to the Commission for further proceedings.

### Discussion

The Commission finds that the existing parties to this proceeding should be invited to address the purpose and the scope of the remand proceeding ordered by the Court of Appeals. Each of the existing parties to this proceeding shall submit briefs outlining their positions with regard to how the Commission should address the complaint given the fact that the Court of Appeals decision is final and not appealable. The parties shall also address what form of proceeding or proceedings should take place before the Commission and what issues each party deems necessary to resolve in those proceedings. The briefs on remand shall be submitted in this docket on or before August 4, 2017.

THEREFORE, IT IS ORDERED that:

A. The existing parties to this proceeding are invited to address the purpose and the scope of the remand proceeding ordered by the Michigan Court of Appeals.

B. Briefs addressing the scope of the remand shall be filed in this docket by August 4, 2017.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of July 12, 2017.

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Kavita Kale, Executive Secretary